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IN THE

# Supreme Court of the United States

December Term, 1963

No. 681

ADOLPHUS BROOKS, *alias*

SONNY ADOLPHUS BROOKS, alias

SONNY BROOKS,

*Appellant,*

vs.

THE STATE OF FLORIDA,

*Appellee.*

## JURISDICTIONAL STATEMENT

ON APPEAL FROM THE SUPREME COURT

OF THE STATE OF FLORIDA

D. B. MONTGOMERY,
1128 South Edgewood Avenue
Jacksonville, Florida
*Attorney for Appellant.*

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## JURISDICTIONAL STATEMENT

Appellant appeals from the Order of the Supreme Court of the State of Florida, Tallahassee, Florida, January Term, A. D. 1963, Case No. 32,541, entered on the 20th day of June, 1963, which denied Appellant Application for Permission to Apply to the Circuit Court of Duval County, Florida, for Writ of Error Coram Nobis.

## JURISDICTION

The Appellant was charged with the crime of rape by an indictment by the Grand Jury, which was filed June 9, 1961, and was thereafter found guilty of said crime by a twelve-man jury in the Circuit Court of Duval County, Florida, with no recommendation for clemency.

Thereafter, Appeal was made to the Supreme Court of the State of Florida, and the verdict of the Lower Court was upheld.

All through the initial trial of this Appellant, which is shown by the Record, the name "Jim Daddy Goatee" constantly appears. This witness was never produced at the trial of this Appellant in the Circuit Court of Duval County, Florida, and said person was thereafter found by the Attorney for said Appellant, on or about January 15, 1963. Thereafter, said "Jim Daddy Goatee," whose real name was discovered to be James Newsome, gave a sworn statement, which statement is set out in the Appendixes on Page 6, together with the results of a Lie Detector Test procured by Attorney for Appellant, of said James Newsome, alias "Jim Daddy Goatee," shown on pages 17-18 of said Appendixes.

Upon the discovery of the witness, James Newsome, alias "Jim Daddy Goatee," whose real name and whose presence had been testified to at the initial trial of this Appellant, the Attorney for Appellant filed an Application for Permission to Apply for Writ of Error Coram Nobis in the Supreme Court of the State of Florida on March 16, 1963, Page 4 of Appendixes, which Application for Permission was subsequently denied by the Supreme Court of the State of Florida.

## QUESTIONS PRESENTED

The Supreme Court of the State of Florida, by its Order entered herein, has refused to grant the Appellant herein the right to a new trial. The questions presented are:

1. The right of an accused to a speedy and public trial, by an impartial jury, and to be heard by himself or counsel or both, to demand the nature and cause of accusation by the State, to meet the witnesses against him face to face, and have compulsory process *for the attendance of witnesses in his favor*, is a right which is guaranteed to him by the Constitution of the State of Florida, Section 11 of the Declaration of Rights. The first question here presented is: DID THE SUPREME COURT OF THE STATE OF FLORIDA DENY THIS APPELLANT HIS CONSTITUTIONAL RIGHT TO BE FACED WITH ALL WITNESSES FOR OR AGAINST HIM BY ITS REFUSAL TO GRANT PERMISSION TO SAID APPELLANT TO APPLY TO THE CIRCUIT COURT OF DUVAL COUNTY, FLORIDA FOR A WRIT OF ERROR CORAM NOBIS?

2. By the Constitution of the United States, Sixth Amendment, the accused shall enjoy the right to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence. DID THE SUPREME COURT OF THE STATE OF FLORIDA DENY THIS APPELLANT HIS CONSTITUTIONAL RIGHT AS GUARANTEED TO HIM BY THE CONSTITUTION OF THE UNITED STATES, IN DENYING HIS PETITION FOR PERMISSION TO APPLY TO THE CIRCUIT COURT OF DUVAL COUNTY, FLORIDA FOR A WRIT OF ERROR CORAM NOBIS?

3. According to the Constitution of the United States, Fourteenth Amendment, no State shall make or enforce any law which shall abridge the privileges or ammunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law. The question here presented is: HAS THE SUPREME COURT OF THE STATE OF FLORIDA ATTEMPTED TO DEPRIVE THIS

APPELLANT OF HIS LIFE, WITHOUT DUE PROCESS OF LAW?

4. This Appellant maintains that the Supreme Court of the State of Florida, in denying Appellant the right to be faced with *all witnesses*, has violated Section 11 of the Decleration of Rights of the Constitution of the State of Florida and the Sixth Amendment and Fourteenth Amendment of the Constitution of the United States.

## FLORIDA JURISPRUDENCE

The principle facts involved herein are as follows: Every person is guaranteed certain rights by the Constitution of the United States, together with certain rights guaranteed to him, or her, by the Constitution of the state in which he resides, no matter what his race or creed may be.

Your appellant has been sentenced to death, and in all cases where the death penalty has been invoked, the Defendant is entitled to every advantage to prove himself innocent of a crime. Also, in all trials relative to cases wherein the Defendant may be sentenced to death, and in which there may be any doubt, such doubt is always resolved in favor of the accused.

Your Appellant maintains that in the case at bar, in which he has been sentenced to death, that he should be given the right to a new trial and to be faced with all witnesses, whether for or against him, and that if such right is given to the Appellant, he will be granted his constitutional rights, both State and Federal.

Appellant believes, therefore, that the question presented by the Appeal are substantial and that the Appellant has been denied his constitutional rights.

Respectfully Submitted,
D. B. MONTGOMERY,
1128 South Edgewood Avenue
Jacksonville, Florida
*Attorney for Appellant*

## CERTIFICATE OF SERVICE

I do hereby certify that on this 16 day of December 1963 I mailed a true and correct copy of the foregoing Jurisdictional Statement with Appendixes to the Attorney General of the State of Florida by placing in a properly addressed envelope with sufficient postage thereon and depositing same in the U. S. Mail.

D. B. Montgomery

D. B. MONTGOMERY,

1128 South Edgewood Avenue

Jacksonville, Florida

*Attorney for Appellant*

SUPREME COURT, U. S.

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ON APPEAL FROM THE SUPREME COURT

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*Attorney for Appellant.*

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## INDICTMENT FOR RAPE

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

The Grand Jurors of the State of Florida, empaneled and sworn to inquire and true presentment make in and for the body of the County of Duval, upon their oaths, do present that Adolphus Brooks, alias Sonny Brooks, late of the County of Duval and State of Florida, on the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and sixty-one, in the County and State aforesaid, in and upon one Jennifer Casandra Baker, a female child under the age of ten years, to-wit: of the age of three years, an assault did make, and her, the said Jennifer Casandra Baker, then and there feloniously did unlawfully and carnally know and abuse; contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida.

## ENDORSEMENT

9528-C DIVISION H—In the Circuit Court of the Fouth Judicial Circuit of the State of Florida in and for Duval County Spring Term, 1961.

THE STATE OF FLORIDA VS. ADOLPHUS BROOKS, alias Sonny Adolphus Brooks, alias Sonny Brooks. INDICTMENT FOR RAPE a true bill. H. E. Geerlings, Foreman of the Grand Jury. WITNESSES FOR THE STATE. Delores Baker, Lt. O. A. Johnson, Dr. David O. Booher, Mazie Baker, Virginia Porter, Jesse Jackson, Henry Edwards, Sgt. J. L. Jordon, Sgt. R. T. Matthews. Presented in open Court by the Grand Jury and filed this 9th day of June, 1961. S. MORGAN SLAUGHTER, Clerk Circuit Court, by Wm. S. Blakely, Deputy Clerk. WILLIAM A. HALLOWES, 3rd State Attorney.

On June 21, 1961, Arraignment and Plea was entered in Minute Book 136 at page 507 as follows:
THE STATE OF FLORIDA,

vs. #9528-C

ADOLPHUS BROOKS, alias SONNY

ADOLPHUS BROOKS, alias SONNY BROOKS.

Comes now William A. Hallowes, 3rd., State Attorney of the Fourth Judicial Circuit of the State of Florida, in and for Duval County, prosecuting for said State; Honorable William H. Maness, Judge presiding; comes also the Defendant, ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, in proper person and attended by counsel; thereupon the Defendant, ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, after being asked his age by the State Attorney and answering 30 years of age, was solemnly arraigned and and pleaded not guilty to the Indictment.

On June 21, 1961, Setting Cause for Trial was entered in Minute Book 136 at page 507 as follows:

**VERDICT**

Jacksonville, Florida

August 1, 1961

We, the Jury, find the Defendant guilty of rape as charged in the indictment.

So say we all.

I. M. Helmey
Foreman.

## LAWS INVOLVED

## FLORIDA JURISPRUDENCE

### Vol. 7, p. 314, par. 17

A writ of error coram nobis issues, not only by the circuit court, but by other state courts having common-law powers of procedure, including the criminal courts of record . . . However, the court which rendered the judgment complained of is the only court having jurisdiction of a writ of error coram nobis to correct or vacate it.

Thus, when a judgment has been affirmed by the Supreme Court and the aggrieved person desires to attack the judgment because of the existence of a fact which, had it been known, would have precluded the entry of the particular judgment, application must be made to the Supreme Court for permission to file a petition for the writ in the trial court. Upon a proper showing made, that court will grant leave to the aggrieved party to make application to the trial court which rendered the judgment to grant a writ of error coram nobis and thereby authorize the trial court to consider the question presented by the application upon its merits, not, however, for the purpose of granting or denying the writ, but for the purpose of deciding whether the judgment as entered should be annulled or affirmed.

## CONSTITUTION OF THE STATE OF FLORIDA
### Declaration of Rights
### Section 11

**Sec. 11. Criminal prosecution; rights of accused.**

Section 11. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed, and shall be heard by himself, or counsel or both, to demand the nature and cause of accusation against him, to meet the witnesses against him face to face, and has compulsory process for the attendance of witnesses in his favor, and shall be furnished with a copy of the indictment against him.

## CONSTITUTION OF THE UNITED STATES

### 6th AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

## CONSTITUTION OF THE UNITED STATES

### 14th AMENDMENT

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law.

**IN THE SUPREME COURT OF FLORIDA**

ADOLPHUS BROOKS, alias SONNY
ADOLPHUS BROOKS, alias SONNY
ADOLPHUS BROOKS,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

**APPLICATION FOR PERMISSION TO APPLY FOR A WRIT OF ERROR CORAM NOBIS TO THE CIRCUIT COURT OF DUVAL COUNTY, FLORIDA**

Comes D. B. Montgomery, Attorney for ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, and respectfully asks permission of this Court to

apply for a Writ of Error Coram Nobis to the Circuit Court of Duval County, Florida, for the following reasons:

1. That a material witness, one James Newsome, alias "JIM DADDY GOATEE," whose name appears all through the record of the Circuit Court's trial of the above named ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, has recently been found, after a long and diligent search.

2. That said witness, "JIM DADDY GOATEE," whose real name is JAMES NEWSOME, has knowledge which would have greatly altered the findings of the jury in the initial trial, had such witness been presented at that time, and whose testimony was and is relevant to a just, proper and unprejudiced trial of ADOLPHUS BROOKS.

3. That ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, by his undersigned attorney, has made this application as promptly as possible following the discovery of this witness, who has knowledge of the facts surrounding this case.

WHEREFORE, ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, respectfully asks this Honorable Court to grant permission to him to apply to the Circuit Court of Duval County, Florida, for a Writ of Error Coram Nobis.

Respectfully submitted,
D. B. MONTGOMERY,
*Attorney for Appellant*
1128 South Edgewood Avenue
Jacksonville, Florida

I hereby certify that a copy of the foregoing Application has this day been mailed to the Attorney General, Tallahassee, Florida, and the Honorable William A. Hallowes, III, State Attorney, Duval County Court House, Jacksonville, Florida.

Date this 13th day of March, 1963.

/s/ D. B. MONTGOMERY
Attorney for Appellant

## SWORN STATEMENT OF JAMES NEWSOME

Taken before me, J. Russell Gould, a Deputy Official Court Reporter for the Ninth Judicial Circuit, Seminole County, Florida, and Notary Public for the State of Florida at Large, taken on January 26, 1963 at 2:00 o'clock p.m. in the offices of the Sheriff of Seminole County, Sanford, Florida.

APPEARANCES:

DOROTHEA B. MONTGOMERY, ESQ.
1128 So. Edgewood Avenue
Jacksonville 5, Florida

THEREUPON:

JAMES NEWSOME

having been duly sworn, testified as follows:

BY ATTORNEY MONTGOMERY:

Q. State your name, please?
A. James Newsome

Q. What is your residence address?
A. 315 Jefferson Street

Q. Where?
A. Jacksonville.

Q. How long have you lived there?
A. About seventeen or eighteen years, I do not know exactly.

Q. Did you work.
A. Yes.

Q. Where?
A. White Tile Company.

Q. Ever been convicted of a felony or done any time?
A. No, yes, one time; I have done some time here.
Q. What for?
A. Driving while intoxicated, they found some wine
Q. Have you been arrested in Duval County?

A. Yes.
Q. What were the charges?
A. Disorderly, drunk driving, something like that, I have never stole or killed anybody.
Q. Ever been arrested for a crime of assault on a girl?
A. I been charged about non-support.
Q. You were o rare married?
A. Yes.
Q. Do you live with your wife?
A. No.
Q. Any children?
A. Three. She gave them to me.
Q. You keep them?
A. No, I do not. My grandmother. She told me to care for them. There was no argument. She did not agree to go in the house. I take care of them.
Q. James, do you remember where you were in April of 1960?
A. I think I was in Sanford, I do not know, but Sanford city jail in 1960. Yes.
Q. When you got out of the city jial where did you go?
A. Jacksonville.
Q. In the Spring of 1960 where were you?
A. I must have been in Jacksonville.
Q. When you were in Sanford or Seminole County jail, did you get to meet a man named Brooks, Sonny Brooks?
A. I met a Sonny Brooks.
Q. You met a man with that name?
A. Yes.
Q. Did you ever see him after you left the jail here and in Jacksonville?
A. Yes, I did.
O. Do you remember when?
A. On a Saturday, coming by where I lived and that was on a Saturday.
Q. Were you with him on that Saturday?
A. I got with him that afternoon. I did not go no place. I went to Madison and Ashley Street.

Q. What is there?
A. There is a bar on one corner.

Q. Red Dan's bar?
A. El Chico's bar.

Q. Do you know Red Dan's bar?
A. He don't have a bar.

Q. A restaurant?
A. Yes, a restaurant.

Q. You know Red Dan's?
A. Yes.

Q. You have been there?
A. Yes.

Q. Do you know Irene Baker?
A. No.
Q. Do you know Maisie Baker?
A. No.
Q. You have never met Irene or Maisie Baker?
A. No, sir, I never knew the name, it might be called something else.
Q. You are under oath.
A. I am explaining the truth. I am really going to tell the truth.
Q. Then you tell me you did not go to a certain house with Adolphus Brooks, or Sonny Brooks, that Saturday; was he drinking that day?
A. Yes.
Q. Were you drinking?
A. When we got in I had not had any when he found me.
Q. When Sonny Brooks found you what happened?
A. Waited a minute, then we called a taxicab and took the taxicab and we go out—I remember more now—he said something about going to Durkeyville.
Q. Where is that?
A. In Jacksonville and he said I want you to meet my people. One thing he was drinking heavy and I remember going and remember eating with him that day and had some collard greens.

Q. Where was this house?
A. Durkeyville.

Q. What street was it on?
A. I don't know the name of the street.

Q. Ever hear of Payne Court in Jacksonville?
A. I cannot remember.

Q. You do not know where it is but what did you do there?
A. It was a project house, one with a downstairs and an upstairs.

Q. It was a duplex house with two sides in it?
A. You go downstairs and the rooms to sleep in where that was upstairs and there was a living-room and kitchen downstairs.

Q. Did you go in the front or back door?
A. The back door.

Q. Who was in the house?
A. The only thing I remember there was a girl there.
Q. The whole time?
A. He found the girl to tell somebody something and to get something cooked.
Q. Do you know who she was or did he call the girl's name?
A. No.
Q. Was her name Maisie?
A. I do not know.
Q. How big a girl was she?
A. Fourteen or fifteen I imagine.
Q. Did she fix you something to eat?
A. Yes.
Q. You did not see anybody else there?
A. No. I was in the living-room and went to the kitchen to eat and went back to the living-room and sat on the long chair or couch.
Q. Where was Sonny?
A. While I was sitting there smoking and that he went upstairs.

Q. By himself?
A. By himself.

Q. What happened?
A. I tell you what happened. Later when Sonny went upstairs, after going up the girl went up and no, I believe the girl went up first. Before she went up the stairs and she say something to Sonny and Sonny to her.

Q. This is very important, what was said?
A. Yes, I am going to tell the truth.

Q. There is a man's life at stake.

A. I am telling the truth and raise my right hand to God.

Q. It is important to me to know if there was any conservation between Sonny and this young lady, whose name was Maisie

Q. Every girl is bigger than me, but she was fourteen or fifteen and was she tout or short. She was fat when I saw her, maybe not when you did?
A. No.

Q. Did she say anything to him in the room?
A. No. I heard her say, "You better leave me alone."

Q. Was Sonny drunk?

A. He was drinking heavy.

Q. Staggering?

A. Staggering but not falling. I left to get a cab. I did not want to be around. He said for me to get a cab. I said, "Okay." He came downstairs and said, "Get me a cab." I went to the avenue and got in and went back to town and left Sonny out at Durkeyville. He was downstairs when I left him.

Q. While you were there Maisie never left the house?
A. She stayed upstairs.

Q. Where was she when you left?
A. She went out the back door. I come to think of it. She run out the front door before Sonny came down. He come down after she said, "Leave me alone." She run out the back door. Sonny said, "Go get a cab, I am moving. I went to the post and got a taxicab. Maisie went ou the back door.

Q. You saw nobody else in the house?
A. No, nobody else in the house with her.
Q. Not even a dog or cat?

A. No the little girl fixed food and came back out and Sonny came and said to and told me to get a cab and that he was getting his things and moving. That is the truth.
(At this point Attorney Montgomery stopped all questions and held an Off-the-Record discussion with Mr. Newsome.)

Q. How old are you?
A. Thirty-two.
Q. Ever had a brain injury of any kind?
A. No, I got hit in the head though.
Q. Ever been sick?
A. Yes. I had fits and my memory slips. I am trying to think. You mentioned about the little girl. I think one came in out of the street. Think I could remember one having come in the door.
Q. Let me ask you—
A. Adolphus came down the stairs and I heard talk that she was trying to get away. He came down the stairs.
Q. And asked you to get a cab?
A. Yes.
Q. What did he do? Did he come down and go right back upstairs?
A. He came downstairs and said to get a cab and he went as far as the kitchen.
Q. You went out the back door?
A. Yes.
Q. Maisie was still upstairs?
A. No, she was gone.

Q. When did Maisie come down and go out?
A. She came down ahead of Sonny.
Q. What were you doing when she came down?
A. Sitting on the settee.
Q. By yourself?
A. Yes. I cannot remember any little girl being there.
Q. You do not know.
A. No.
Q. You do not know Irene Baker when she tells me she has known you a long time?
A. Has she been there?
Q. She has been in Red Dan's place. Have you been there?
Q. Yes.

Q. You lived there seventeen years and know Ashley Street and not been in there?
A. Yes, but I did not visit it around with anybody.

Q. You have been in there?
A. She may know me.

Q. Isn't your name and you are known as Jim Daddy Goatee?
A. Yes, they called me that. Did this Irene call me that? I may know her under another name. She got more sisters. Probably I know another name. That is what they call me.

Q. You stated as far as you can recall there was no little girl in there; you do not recall any little girl when you came to eat dinner?
A. I am trying to think. Seemed like one came in the front door there was at the door a girl or boy. I just do not remember.

Q. You do not remember if it was a girl or boy?
A. Seems I remember something about a child with a doll. A little doll, had it in her arms.

Q. The first part of this statement you said you went in the house and there was nobody?
A. The first time I went in.

Q. I asked you three times and you said there was nobody but this young girl, Maisie?
A. Yes, this fourteen year old girl.

Q. I asked it three times.
A. I do not know the people. I did not meet no people but the girl. She said, "Glad to know you, Jim." I said, "I am glad to know you."

Q. Did this girl, Maisie, leave the house at any time after you ate and while you and Sonny were sitting in the living-room?
A. Did she leave the house, yes to go out.

Q. Where did she go?
A. Yes, went out.

Q. Did she come back?
A. Yes.

Q. Come back with anything in her arms?
A. I do not remember. I saw she come back and went upstairs while we were sitting there.

Q. You went out the back door to get a cab?
A. Yes.

Q. Sonny was standing in the living-room when you left?
A. He come to the kitchen when I went out the back door. I said, "I will get back with the cab," and left.

Q. Did you go out the kitchen door and say, "I will be back?"
A. I told him, "Okay."

Q. You told him while going out the door?
A. In the house and said, "I will be back with the cab."

Q. Did you go out in the yard and turn and say something to him?
A. No.

Q. You did not say anything to him from the yard?
A. Yes, Mam, I tell you when I opened the screen door I said, "I will be back." I went out the back yard.

Q. There was no little girl there?
A. I remember. I had to say I am telling it straight. I do remember something about a kid with a doll.

Q. You remember the kid coming with a doll and you do not know if it was a boy or girl, do you remember how long you were in the house or where you were, in the living-room or the kitchen, and where was Sonny, up or downstairs?

A. The little kid come in.

Q. If you wrack your memory didn't the little kid go out again? You said you were sitting by yourself?

A. Yes, I know I was sitting by myself. I remember the kid coming in with the doll. When the girl went upstairs I was there by myself when Sonny went up. I just cannot remember.

Q. After that day did you ever see this girl again?

A. No, Madam, never.

Q. Did you continue working in Jacksonville?

A. Yes, sir, working then.

Q. Do you read newspapers?

A. No, I cannot read papers.

Q. Were you around Ashley Street any time after that?

A. Yes.

Q. Did you go, like most of you do, in Chico's and Dan's place and get the gossip?

A. Yes, I go to places.

Q. You never heard Sonny Brooks was arrested?

A. No, madam, I did not know. First time I heard it.

Q. You never heard everybody was trying to find you because you were the last one to see him?

A. I heard about a boy looking for me. I did not try to run. They took out a warrant when I came here. They were looking last week.

Q. I am talking about a year ago?

A. No, I have not seen or heard nothing you said until right now. When I walked out that day I have not seen him since.

Q. You never heard about it?

A. I have been away from Jacksonville and the White Tile Company I was working for.

Q. You still say you do not know Irene?

A. I may when I see her. I know a lot of people and do not know their names. I was not raised up there by anybody in Jacksonville.

Q. You lived there seventeen years?

A. I have been around there, I do not know, in four different places and met a lot of folks. I might know her face.

Q. You swear that this little girl, if there was a little girl, you are not sure there was?

A. No, I really do not know.

Q. Don't you think you would remember for certain if there was a four year old girl there? That is all I want to know. There was no child there when you went in?

A. Sorry, I am trying to think. It has been a long time. Sonny said something about my child. He said, "I want you to meet my child" or something like my child.

Q. He could not make a statement like that. He was not married. Do not go bringing up anything like that.

A. I do not know who did he introduce this girl as.

Q. Who did he introduce this girl as, as a relative or girl friend or how?

A. As a girl friend undoubtedly or his girl friend's daughter. He told me something that his wife or something that she was gone to work. I do not know if it was a girl friend or how as I do not remember now. I do not remember now. I just got out the cab and went in the back and said he, "I want you to meet somebody." I do not remember the girl's name. I was not interested. I got a daughter as big as she was and a son as big as I am and I was not interested in her.

Q. It was the only woman you saw?

A. I remember a kid with a doll come in the door.

Q. You remember a kid coming in with a doll what did she do, disappear?

A. I do not know. She might have sat down there. I cannot remember.

Q. You swear that when Maisie and Sonny went upstairs there was no one at that time in the living-room with you?

A. When they went upstairs; there was no kid in the room that I paid any attention to. I was smoking and the girl said "You leave me alone."

Q. There was no one in the room?

A. No. It slipped my remembrance that the kid went out. I do not remember when she went. I remember a kid coming in. I did not pay much attention to it.

Q. How well did you know Sonny Brooks?

A. I really did not. I did not know Sonny well. He looked up my address. He had it.

Q. Were you sitting on the couch of the house that Sonny Brooks took you to that day?

A. I was sitting in the front living-room.

Q. On the couch?

A. Yes.

Q. There was no one there with you?

A. On the couch with me no one, that is the truth. Sonny Brooks did go upstairs behind this girl.

Q. There was nobody in the living-room with you and you were sitting there?

A. I was resting there.

Q. You swear that is the truth?

A. I cannot remember nobody being in the room with me. I don't want to take Sonny's rap; I do not know nothing about it.

**End of Statement**

## CERTIFICATE

STATE OF FLORIDA

COUNTY OF SEMINOLE

I, JAMES RUSSELL GOULD, being a Deputy Official Court Reporter, Ninth Judicial Circuit, Seminole County, Florida, do hereby certify that I was authorized to and did report in shorthand the above and foregoing proceedings, and that thereafter my shorthand notes were reduced to typewriting by myself, and I further certify the pages numbered .. through ...., both inclusive, contain a full, true and correct transcription of my shorthand notes taken therein.

Done and signed, this 6th day of February, 1963, in the city of Sanford, County of Seminole, State of Florida.

/s/J. RUSSELL GOULD

J. Russell Gould
Deputy Official Court Reporter
Ninth Judicial Circuit
Seminole County, Florida

February 11, 1963

POLYGRAM 63-3

*CONFIDENTIAL*

To: Dorothea B. Montgomery, Attorney, 1128 So. Edgewood Ave., Jacksonville 5, Fla.

*ARRANGEMENTS*:

At the request of you, JAMES NEWSOME was examined on the Polygraph, a detection of deception technique. Subject was examined for purpose of ascertaining if he possessed any knowledge regarding rape of 3 year old girl in 1961.

*PROCEDURE*

Subject was examined in a private room with only the examiner and subject present. The Polygraph examination itself consisted of the following: After the intial pre-test interview with the subject, a blood pressure bladder and cuff was wrapped around the upper part of the subject's left arm with the bladder centered over the subject's Brachial Artery. The bladder was inflated with air to a point approximately at subject's arithmetic mean Blood Pressure, or midway between Systolic and Diastolic Blood Pressures for the purpose of recording a continuous indication of subject's pulse rate, pulse wave emplitude, relative blood pressures, and variations therein.

A corrugated rubber tube was fastened around subject's chest for the purpose of recording a continuous indication of the subject's respiratory movements and variations therein.

An insulated sealing for 2 protruding electrodues was fitted on subject's right hand for purpose of recording a continuous indication of subject's Sweat Gland Activity and variations therein.

The seated subject was instructed to sit still, keep both feet flat on the floor, avoid unnecessary movement during running of a test, and to answer each of the questions with a simple word, "Yes or No."

A Koeler Polygraph, Serial #6303135, to which the above accessories were attached, was then activated in accordance with standing instructions thus initiating the continuous and simultaneous recordings described above.

In the beginning of each of the tests, Irrelevant Questions were first asked for the purpose of indicating the subject's nor-

mal tracing plus excitement level, with stimulus, and then through the balance of each test, Relevant Questions pertaining to the matter under examination were interspersed with the Irrelevant Questions for the purpose of indicating any significant changes from the subject's normal tracings, plus excitement level, with stimulus, when asked questions concerning the object of the examination.

*RESULTS*

Subject was examined in this office on February 9, 1963. During the pretest interview subject gave the following personal background information:

James Newsome, 315 Jefferson St., Jacksonville, Fla.; C/M, age 32, born 8-15-30 in Adelle, Georgia; 4th grade education; 5'11"; 155#; married, 3 dependents, nickname, "Jim," "Jim Daddy Goatee," in custody presently at Sanford Jail for escape from City Jail.

The subject was given two tests. Prior to his first test, he denied any knowledge regarding rape of little 3 year old girl.

The subject's Polygram in the first test contained Significant Reactions to the following Relevant Questions:

Was a little girl in the house with you in 1961?
Did you ever touch the private parts of a little girl?
Did you put your finger in the privates of a little girl?
Are you afraid to tell the truth?
Have you lied to any of my questions?

During the interregotion following the first test, the subject refused to verify the indications of the instrument.

The subject's Polygram in the second test continued to contain Significant Reactions to the following Relevant Questions:

Did you ever commit a crime you were afraid of?
Did you try to have sex relations with a little girl?
Did you put your finger in a little girl's privates?
Did you run away because you were afraid?

Did you ever see a child under 14 years old at the house?

Did you ever see anyone besides the 14 year old girl?

Are you trying to hide any information from me?
Have you lied to any of these questions?

Did you just lie to me? (After he was asked "Did you ever see a child under 14 years old at the house.)

During the interrogation following the second test, subject still refused to verify the indications of the instrument.

*CONCLUSION*:

After careful analysis of this subject's Polygram, it is the opinion of the examiner that this subject did not tell the complete truth during his examination and interrogation.

/s/ BOYLE NETTLES
Boyle Nettles
Polygraph Examiner

**IN THE SUPREME COURT OF FLORIDA**

ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS,

Appellant,

**vs.**

THE STATE OF FLORIDA,

Appellee.

CASE NO. 32,541

**NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES**

1. Notice is hereby given that ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS, Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Florida, denying the Writ of Error Coram Nobis entered in this action on June 20, 1963.

This appeal is taken pursuant to 28 U.S.C. 12.57 (1) and 12.57 (2).

2. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in the transcription the following: Petition for Writ of Error Coram Nobis and Order denying Writ of Error Coram Nobis.

3. The following questions are presented by this Appeal:

(a) Appellant Adolphus Brooks was convicted of the charge of rape by the Circuit Court of Duval County, Florida, on the 1st day of August, 1961.

(b) The Appellant appealed his case to the Supreme Court of the State of Florida, and the verdict of the lower Court was upheld by Order dated the 24th day of October, 1962.

(c) Thereafter, a witness by the name of James Newsome, alias Jim "Daddy" Goatee, who neither the State nor the Appellant could locate at the time of the Appellant's intial trial, was found.

(d) Your Appellant filed his Application for Permission to Apply for a Writ of Error Coram Nobis to the Circuit Court of Duval County, Florida, for the reason that this witness had been found, and such Writ was denied by Order of the Supreme Court of the State of Florida dated this 20th day of June, 1963.

/s/ D. B. MONTGOMERY

D. B. Montgomery

*Attorney for Appellant*

1128 South Edgewood Avenue

Jacksonville 5, Florida

I HEREBY CERTIFY that a copy of the above Notice of Appeal to the Supreme Court of the United States was this day mailed to the Attorney General of the State of Florida, Tallahassee, Florida, dated this 12th day of September, 1963.

/s/ D. B. MONTGOMERY
*Attorney for Appellant*

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1963

THURSDAY, JUNE 20, 1963

ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

CASE NO. 32,541

The Attorney for the above named appellant has filed an application for permission for him to apply to the Circuit Court of Duval County, Florida, for Writ of Error Coram Nobis, and upon consideration thereof, it is ordered that said application be and the same in hereby denied.
A True Copy

TEST:

Guyte P. McCord

Clerk Supreme Court.

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 16 day of ~~October,~~ Dec, A.D., 1963, I mailed a true and correct copy of the foregoing Jurisdictional Statement with Appendixes to the *Attorney General of the State of Florida* by placing in a properly addressed envelope with sufficient postage thereon and depositing same in the U.S. Mail.

D B Montgomery
Atty. for Appellant

Office-Supreme Court, U.S.
FILED
JAN 25 1964
JOHN F. DAVIS, CLERK

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IN THE

# Supreme Court of The United States

OCTOBER TERM, 1963

NO. 681

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ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS,

Appellant,

-vs-

THE STATE OF FLORIDA,

Appellee

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## MOTION TO DISMISS APPEAL

---

JAMES W. KYNES
Attorney General

REEVES BOWEN
Assistant Attorney General

Counsel for the Appellee

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IN THE

# Supreme Court of The United States

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Appellant,

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THE STATE OF FLORIDA,

Appellee.

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## MOTION TO DISMISS APPEAL

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The appellee, the State of Florida, shows unto the Court as follows:

I

The appellant's appeal (Appellant's Appendixes, pp. 20-21) is from an order of the Supreme Court of Florida (Appellant's Appendixes, p. 22) denying his application (Appellant's Appendixes, pp. 4-5) for leave to apply to the Circuit Court of Duval County for a writ of error coram nobis.

II

Said application for leave to apply for a writ of error coram nobis (Appellant's Appendixes, pp. 4-5) did not present to the Supreme Court of Florida a substantial federal question, said order of denial (Appellant's Appendixes, p. 22) did not

expressly pass upon or decide a substantial federal question, and the appellant's appeal does not present a substantial federal question.

III

Moreover, said order rests on an adequate non-federal basis because the appellant's said application for leave to apply for a writ of error coram nobis was bottomed upon newly discovered evidence (evidence discovered since the appellant's trial) and because:

(a) A writ of error coram nobis is not available on the ground of newly discovered evidence (Lamb v. Harrison, 91 Fla. 927, 108 So. 671; Jones v. State, 130 Fla. 645, 178 So. 404). This is so even though it is shown that the party applying for such a writ will be able to produce the most convincing evidence in his behalf which was not available at the time of trial (Baker v. Peavy-Wilson Lumber Company, 146 Fla. 27, 200 So. 528).

(b) Viewed most favorably to the appellant, the said newly discovered evidence *might*, if stretched beyond the breaking point, have caused a different result if it had been available at the appellant's trial; it would not have *prevented* the appellant's conviction. Therefore, a writ of error coram nobis is not available on account of such newly discovered evidence. (Hysler v. State, 146 Fla. 593, 1 So.2d 628; Thompson v. State, 154 Fla. 769, 18 So.2d 788).

Wherefore, the appellee moves the Court to dismiss the appeal in this cause.

Even if the appellant's appeal should be treated as a petition for writ of certiorari, such petition could not be granted for

the reasons shown above, that is, that no substantial federal question was raised in the Supreme Court of Florida, none was expressly passed upon by said Court, and none is presented to this Court, and the order of the Florida Court which is challenged by the appellant rests on an adequate non-federal basis.

Respectfully submitted,

JAMES W. KYNES
Attorney General

REEVES BOWEN
Assistant Attorney General

Counsel for Appellee

## CERTIFICATE OF SERVICE

I hereby certify that I furnished a copy of the foregoing Motion to Dismiss Appeal to counsel for the appellant, Mrs. Dorothea B. Montgomery, Attorney at Law, 1128 South Edgewood Avenue, Jacksonville, Florida, by mail, this the ..... day of January, 1964.

REEVES BOWEN
Assistant Attorney General

Of Counsel for Appellee